

***United States Court of Appeals
for the Second Circuit***



**SUPPLEMENTAL
APPENDIX**

ORIGINAL

74-2272

In The
United States Court of Appeals
For The Second Circuit

B
P/S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

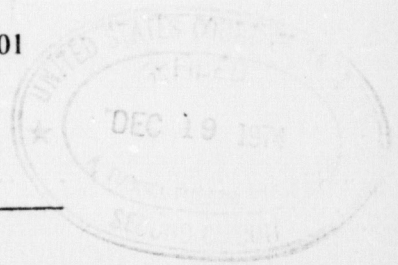
ANTHONY LA VECCHIA, EDWARD BOGAN, HERBERT
KURSHEOFF and NICHOLAS ANDRIOTIS,

Defendants-Appellants.

*On Appeal from the United States District Court for the Eastern
District of New York*

**BRIEF AND SUPPLEMENTAL APPENDIX
FOR DEFENDANT-APPELLANT,
NICHOLAS ANDRIOTIS**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Was there independent evidence tending to prove that Andriotis had some knowledge of the broader conspiracy when he allegedly bought a package of counterfeit money from Russo and McMillan?
2. Was this single transaction in itself one from which a jury might reasonably infer such knowledge?
3. Was the jury's deliberation on count eleven influenced and prejudiced by the submission of count twelve?

STATEMENT OF THE CASE

The defendant-appellant Nicholas Andriotis was charged and convicted after a trial by jury of the crimes enumerated in counts eleven and twelve of the indictment returned on March 23, 1973 in 73 Criminal 305. Count eleven charged violation of Title 18, United States Code, Sections 473 and 2, in that on or about late August, 1972 within the Eastern District of New York, the defendant Andriotis allegedly bought and received approximately one

thousand (1,000) counterfeit ten dollar Federal Reserve Notes, knowing the same to be false, and intending them to be passed as true and genuine. Count twelve charged that the defendant Andriotis knowingly and wilfully conspired with the defendants LaVecchia, Bogan, McMillan, Setford, a/k/a "Spike", Evangelista, a/k/a "Alibi", Russo, Parkiewicz, Martino and Kurshenoff to commit an offense against the United States in violation of Title 18, U.S. Code, Sections 472 and 473, by conspiring with intent to defraud to possess, conceal, buy and transfer quantities of counterfeit ten dollar (\$10.00) Federal Reserve Notes.

Only the defendants LaVecchia, Bogan and Kurshenoff were tried with Andriotis. The defendants McMillan and Russo testified on behalf of the Government.

Assuming, arguendo, for the purpose of this appeal that the evidence received at the trial was admissible and credible, the following was established:

In June, 1971 McMillan was approached by Evangelista who inquired about buying counterfeit money. (Transcript at 538). McMillan then called LaVecchia to ask about obtaining some. (T.538-39).

In July, 1971 LaVecchia delivered thirty thousand counter-

feit ten dollar Federal Reserve Notes to McMillan, a total of \$300,000, on a consignment basis. (T. at 540-44; 557). McMillan broke this money down into packages of ten thousand dollars each to facilitate its sale. He thereafter sold a \$10,000 package to Setford (Spike) and Evangelista (Alibi). (T. 545-46). One week later he sold \$75,000 more to these men. (T. 547). Next, he sold three packages, or a total of \$30,000 to his nephews. On two subsequent occasions he sold a \$10,000 package, or a total of \$20,000, to Russo. The remaining \$165,000 in counterfeit money was then sold to Setford and Evangelista - thus accounting for the entire \$300,000 sold to McMillan by LaVecchia. (T. 547-48).

With the receipts from these 1971 sales, McMillan pays LaVecchia for the total \$300,000 delivery. (T. 550).

Setford and Evangelista attempted to sell part of this counterfeit money to an undercover agent of the United States Secret Service on July 20, 1971, and were arrested. (T. at 264-72). With this, McMillan, having sold the entire sum he received, and having paid LaVecchia for it, discontinued the counterfeit business and disappeared. (T. 1150-53).

A full year later, in June, 1972, McMillan reappears and meets his friend Russo. He and Russo then agree to begin selling counterfeit money in partnership. (T. at 560).

McMillan recontacts LaVecchia and receives \$25,000 in counterfeit money, again on consignment. He takes the money to Russo's house, and they break it up into packages of \$5,000 each. Some of this money is sold by McMillan to Martino; while Russo sells one package to Kurschenoff. (T. 563-65).

After this \$25,000 is distributed, McMillan pays LaVecchia and receives another \$25,000 package of counterfeit money. (T. 565-66). He takes it to Russo, and they again break it up into packages of \$5,000. Russo again sells one of these packages to Kurschenoff. (T. 570-72).

Then, in August McMillan obtains a third delivery of \$100,000 in counterfeit money from LaVecchia. (T. 572-73).

Russo then decides to approach Nicholas Andriotis, a co-worker for about two years at the Menas Nastasti Real Estate Office, and offer to sell him counterfeit money. (T. at 411). Russo testified that they could not agree on a price, so he suggested to McMillan that he come to the office and speak to Andriotis. (T. at 575).

Some two weeks after McMillan's visit to the real estate office in late August, 1972, Andriotis agreed to buy a package of ten thousand dollars (\$10,000) in counterfeit money, and gave Russo instructions with respect to the delivery of the money to a

third, unknown party. (T. at 491-92; 513-14). Russo delivered the package; he then returned to the office and Andriotis paid him \$1,400. Some days later Russo and McMillan met to divide the money between them.

Russo acknowledged that at no time did he ever see Andriotis in possession of counterfeit money. (T. at 487). He stated that the person to whom he delivered the counterfeit money, upon Andriotis' instructions, was unknown to him and someone whom he had never seen in the company of Andriotis. (T. at 489).

Russo testified that he never discussed other sales of counterfeit money, nor his criminal enterprise and association with McMillan in the presence of Andriotis. (T. at 486). Russo further testified that it was he that first broached the question of the sale of counterfeit money to Andriotis. (T. at 489). He also revealed that he had no personal or independent recollection of the discussion about prices between McMillan and Andriotis. (T. at 512).

McMillan acknowledged as well, in his testimony, that in his prior visits to the real estate office to see Russo, his conversations with Andriotis were limited to "just saying hello, this and the other," purely social niceties. (T. at 733). He stated that his contact with Andriotis was limited solely to a discussion of the price for the sale of counterfeit money on this one occasion:

When at Russo's request he went to see Andriotis at the real estate office. (T. at 575). He acknowledged that no one else was present during this conversation, and that at no time did he deliver to or see Andriotis in possession of counterfeit money. (T. at 735).

McMillan also testified that the only knowledge he had of the alleged single sale of counterfeit money to Andriotis was when Russo told him that a sale had been completed. He noted that Russo told him that he had made just this one sale to Andriotis. (T. at 735).

In addition to the alleged sale to Andriotis of \$10,000 in counterfeit money from the \$100,000 delivery to McMillan in August, 1972, McMillan sold some of this "money" to Phil Martino. Some \$35,000 - \$45,000 was not salable because of its poor quality.

Martino then sells \$10,000 of this "money" to an undercover Secret Service Agent on August 24 or 25th. (T. at 291). Two weeks later, on September 6, 1972, Martino sells another \$10,000 to the agent, and is arrested. (T. at 294).

On that same day, another undercover Secret Service Agent is introduced to Russo by Martino. (T. at 274). Using Martino as an intermediary, the agent buys \$5,000 in counterfeit money from

Russo. Russo is arrested on November 8, 1972, agrees to cooperate by implicating McMillan and Martino and turns a quantity of counterfeit money over to the agent on December 9, 1972. (T. at 282; 376). McMillan is thereafter arrested in January, 1973 and he too agrees to cooperate.

On February 6, 1973, an undercover Secret Service Agent is sent for the purpose of surveillance to Bogan's place of business. On February 13th, McMillan is fitted with a recording device and sent to see LaVecchia about buying another \$25,000 in counterfeit money. On February 15th, McMillan is again fitted with a recording device, and sent to complete the sale. LaVecchia gives him a key to a locker at Penn Station where \$25,000 in counterfeit money is recovered.

Thereafter, LaVecchia is arrested and the money given him by McMillan, which was provided by the agents, is recovered.

Bogan is then arrested at his place of business, where \$225,000 in counterfeit money is recovered from a filing cabinet, and other quantities in addition to counterfeit plates and negatives, are found in the area of Bogan's place of business.

It should be noted here, that McMillan testified that all

the counterfeit money he received up until February 15, 1973 was on a consignment basis. (T. at 654).

This in summary is the totality of the evidence presented by the Government against Andriotis to sustain the charges in counts eleven and twelve.

When the Government offered Exhibits 40 (the \$10,000 bought by an agent from Setford and Evangelista in 1971, T. at 264), 41 (the counterfeit money purchased by an agent from Russo on September 6, 1972, T. at 272-73), 42 (the counterfeit money surrendered by Russo to the agents subsequent to his arrest), 43 and 44 (the counterfeit money purchased by the agent from Martino in late August and September, 1972, T. at 282-83), 11 and 12 (the plates and negatives seized from Bogan's place of business on February 15, 1973), and 15 through 18 (the counterfeit money recovered on February 15, 1973) the Court below questioned whether they would be admissible as against Andriotis, stating: "I think some of these may not be admissible as against Andriotis or Mr. Kurschenoff. I will have to rule on that later on, that is, as to the extent to which they may be evidence of their being conspirators, I will receive them as against Mr. LaVecchia and Mr. Bogan" (T. at 801-02).

Although no additional evidence of any sought was offered

by the Government against Andriotis, the Court denied defense counsel's motion for a judgment of acquittal, and permitted the case to go to the jury on both counts eleven and twelve.

Further, when counsel for LaVecchia requested a United States v. Kotteakos, 328 U.S. 750 (1946) type charge that if the jury find more than one conspiracy, they must acquit, the Court replied: "Well, they don't have to acquit LaVecchia and Bogan, they have to acquit the others." (T. at 1009-10). When Andriotis' counsel sought to reaffirm this as the Court's position with respect to Andriotis, the Court acknowledged that if the jury should find that there was more than one conspiracy, then Andriotis indeed should be acquitted. (T. at 1012-13). However, the Court in its Charge failed to take this position: (Joint Appendix at 244-48).

"The indictment charges a single conspiracy extending from June, 1971 to February 15, 1973. If you find that all the counterfeit bills were printed from plates made from the same negatives that were found in 270 Lafayette Street on the night that Mr. Bogan and Mr. LaVecchia were arrested, you can find that it was a single conspiracy. It is possible for a person to be a member of a continuing conspiracy, even if he joins after it begins and drops out before it ends. If you find that there were separate conspiracies in 1971, 1972 and 1973, then what I said about the use of acts and statements of co-conspirators should be modified because statements made in one

conspiracy cannot be used against the defendant who is a party only to a different conspiracy. That would mean, for instance, that transactions and statements in 1971 and 1973 could not be used against Mr. Andriotis and Mr. Kurschenoff in connection with the sales to them that were alleged to have been made in the summer of 1972." (T. at 1196-97) (J. Appendix at 376-77).

When counsel sought to clarify this matter by requesting the Court to reaffirm its prior ruling on this issue to the jury, such motions were denied. (T. at 1224-25; 1228-29).

The jury was thus permitted to find that from this single transaction itself, they might reasonably infer to Andriotis' knowledge of the broader conspiracy and the intent to be apart thereof. Further, they were permitted to find Andriotis guilty of the conspiracy count even though they found three separate, distinct conspiracies. They were only cautioned against using acts and statements of co-conspirators in 1971 and 1973 against Andriotis if they indeed found three separate conspiracies.

ARGUMENT

Point I

The Court below erred in denying Andriotis' motion for a judgment

of acquittal on count twelve and permitting the issue to go to the jury.

It is settled law in this Circuit that to constitute a conspiracy, it is not necessary that all of the parties be personally acquainted with each other, nor that one have direct contact with all others. Martin v. United States, 100 F.2d 490 (10th Cir.), cert. denied, 306 U.S. 649 (1939). However, to be associated with a conspiracy one must have actual knowledge that others have combined to violate the law, and with such knowledge knowingly cooperate in some affirmative manner to further the purpose of the conspiracy.

The reasoning behind this rule is clear. While the commission of a substantive violation of the law may be some evidence of a defendant's participation in a conspiracy, such violation alone does not make the defendant part of that conspiracy.

The oft-cited decision in point in this Circuit is United States v. Peoni, 100 F.2d 401 (2nd Cir. 1938). There A sold counterfeit bills to B who sold them to C who was arrested while attempting to pass them. Although the Court assumed that all three, A, B & C, knew the money was counterfeit and that A knew that B might sell it to someone else, A was held not to be part of a conspiracy. The Court reasoned that a conspiracy imports a concert

of purpose, and A had no concern with the money after B paid him for it. The enunciated rule was that no one is liable in conspiracy except for the fair import of the concerted purpose or agreement as he understands it.

More recently the Court of Appeals has had occasion to expressly address this issue. In United States v. Agueci, 310 F.2d 817 (2d Cir. 1962), cert. denied, 372 U.S. 959 (1963), the Court noted the many cases it had decided holding that proof of participation in a single isolated transaction may be insufficient to warrant a conviction for conspiracy. The Court, as well, emphasized that the so-called single transaction rule is not an arbitrary one which is to be applied rigidly and without reason. But, a defendant must be exonerated when there is no independent evidence tending to prove that he had some knowledge of the broader conspiracy, and when the single transaction is not in itself one from which such knowledge might be inferred. "A single act may be the foundation for drawing the actor within the ambit of a conspiracy. ...But, since conviction of conspiracy requires intent to participate in the unlawful enterprise, the single act must be such that one may reasonably infer from it such an intent." United States v. Aviles, 274 F.2d 179, 189 (2d Cir.), cert. denied, 362 U.S. 974 (1960).

In Agueci, the Court found such independent evidence from

which Cottone's knowledge of the overall conspiracy might be inferred, and it detailed that evidence. Additionally, the Court found that a jury could have reasonably inferred from the nature of Cottone's single transaction that he had actual knowledge of the conspiracy. An analysis of the nature of the single transaction and the evidence against Cottone in Agucci, with the facts relevant to Andriotis herein, reveals the striking weakness of the Government's case against Andriotis.

Even in Aviles, supra at 190, the Court found that only when in addition to a transaction with one of its members there is independent evidence of knowledge of the conspiracy itself, would it be reasonable to infer intent to participate in it. With respect to Andriotis, the Government presented no such independent evidence of knowledge.

In United States v. DeNoia, 451 F.2d 979, 981 (2d Cir. 1971), DeNoia, while carrying a firearm, delivered a bag containing heroin to Pavia, who had arranged to consummate the sale to undercover agents. The Court held that DeNoia's delivery of the heroin was not the kind of single transaction sufficient to support an inference of knowledge of a broader conspiracy.

However, the Court found that evidence of two sales of heroin, Jacovino's and Scorzello's proven knowledge of the common

origin of the drugs in the two transactions, combined with the nature of the transactions, was sufficient for an inference that each of these defendants knew he was involved in a criminal enterprise of substantial scope, which was likely to involve other persons. "Therefore," the Court held, "even though each was only implicated in one transaction, a jury could properly infer participation in an over-all conspiracy."

In the following year, Chief Judge Kaufman, writing in United States v. Cirillo, 468 F.2d 1233, 1235 (2d Cir. 1972), held that "the critical inquiry in any conspiracy case involves a determination of the 'kind of agreement or understanding (that) existed as to each defendant ... as he understood it.'" (Citations omitted).

Recently, in United States v. Cirillo, 499 F.2d 872, 883 (2d Cir. 1974), this Court reiterated that "mere association with persons engaged in a criminal enterprise or even presence at the scene of their crime will ordinarily not be enough. There must be some basis for inferring that the defendant knew about the enterprise and intended to participate in it or to make it succeed." Further, in considering and rejecting the arguments of Venetucci, Lillienthal and Cesare, this Court noted: "We are not here confronted, however, with merely a single delivery or purchase on the

part of each of these three appellants ... which, without more, might not support knowledge of a broader conspiracy, but with deeper involvement on the part of each of these participants." (Citations omitted). United States v. Cirillo, 499 F.2d at 887.

The Sixth Circuit in United States v. Bostic, 480 F.2d 975 (6th Cir. 1973) expressly passed on this issue in a counterfeit case similar to the instant. Therein, Bartlett was named as a co-conspirator with four others to keep, sell and utter counterfeit money with intent to defraud the United States. Bartlett had sold counterfeit money to one of the alleged co-conspirators. Emphasizing the single transaction and the lack of independent evidence, the Court expressly found that this single sale alone would not make Bartlett a part of the underlying conspiracy.

Assuming that Andriotis did once buy counterfeit money from Russo and McMillan, it is clear that he had no interest in, concern, or knowledge of any past or future dealings of Russo or McMillan or their co-conspirators.

It is respectfully submitted that the trial court erred in denying Andriotis' motion for a judgment of acquittal on the conspiracy count and permitting the issue to go to the jury.

There was no independent evidence whatsoever offered by

the government which tended to prove that Andriotis had some knowledge of or consciously participated in the broader conspiracy, and the single transaction herein was not such that in itself one might reasonably infer to Andriotis both knowledge of a broader conspiracy and intent to participate therein.

The government's proof showed no more than a single, isolated purchase by Andriotis from Russo, with the aid of McMillan. He had no agreement or understanding with them. He had no knowledge of their ongoing criminal enterprise, and no interest therein. He did not know the fact of the common origin of the "money", and had never discussed it or been present when it was discussed.

Andriotis' connection to the broader conspiracy herein was even less direct and incriminating than that of DeNoia.

Russo and McMillan admittedly never discussed their ongoing criminal enterprise in Andriotis' presence. Andriotis did not know and never heard of LaVecchia, Bogan, Martino, Setford, Evangelista or any of the other co-conspirators. He did not know the nature of the conspiracy, the origins thereof, nor its scope or range.

The Court of Appeals in United States v. Cangiano, 491 F.2d

906, 910 (2d Cir. 1974) held that where specific intent is required, as in an attempt or conspiracy count, the proper charge requires that the element of actual knowledge be found by the jury.

The proof offered by the government permitted no such finding as against Andriotis.

The law of conspiracy must not be stretched so far as to engulf a man whose ties to it are so thin and incidental. It was not intended that one who, without more, commits a substantive violation of the law in dealing in an isolated, single transaction with certain of the co-conspirators is thereby drawn into and made a part of a conspiratorial plan which he has no knowledge of and interest in.

The government must be required to show more than it did with respect to Andriotis. A decision to the contrary would identify anyone who buys a proscribed substance with the criminal confederation that markets it. Such is not the intent nor meaning of the law.

Point II

The submission by the Court below to the jury of count twelve along with count eleven unfairly prejudiced the jury's determination with respect to count eleven.

As the court instructed the jury in its Charge, "a conspiracy has sometimes been called a partnership for criminal purposes in which each member becomes the agent of every other member. That is the basic reason why the testimony of conspirators about what a defendant or another co-conspirator said or did during a conspiracy and in furtherance of the conspiracy is admissible." (T. at 1194). (J. Appendix at 374).

The jury, having determined the existence of a conspiracy and having erroneously determined that Andriotis was a part of that conspiracy - whether they determined that there was a single conspiracy or that there were separate conspiracies in 1971, 1972 and 1973 - was then permitted by the Court to hold the acts or declarations of all the other co-conspirators against Andriotis. That is, if they determined that there was a single conspiracy then the acts and declarations of all the conspirators between June 1971 and February 15, 1973 were used against Andriotis. If they determined that there were separate conspiracies, then the acts and declarations of the conspirators in 1972 were used against Andriotis.

Since the substantive count eleven related to Andriotis' buying and receiving \$10,000 in counterfeit money, the same act for which he was erroneously made part of the broader conspiracy,

the prejudicial nature of the submission of the conspiracy count on the jury's consideration of the substantive count is clear. This is particularly emphasized by the Court's instructions to the jury that "(w)ith respect to Mr. Andriotis, Mr. Russo's testimony is confirmed to some extent by McMillan's testimony." (T. at 1209)

The hearsay testimony of McMillan was that Russo told him that a sale to Andriotis of counterfeit money had been completed. (T. at 734-35). These and the other declarations and acts of the conspirators undoubtedly had a spill-over affect and prejudiced the jury's deliberations on count eleven. (See also T. at 575).

These acts and declarations would not otherwise have been admissible against Andriotis with respect to the charges in count eleven. They were nevertheless considered against him by the jury because of the inclusion in their deliberations of count twelve. Absent these acts and declarations, there was not ample evidence to support Andriotis' conviction on the substantive count.

The situation in United States v. DeNoia, supra at 981, on this issue, is not in point. DeNoia's conviction on the substantive counts for possessing a firearm during the commission of a felony and of concealing, transporting and selling heroin was

affirmed, although his conspiracy conviction was reversed. But there, undercover agents were present when "at the designated time and place" for the consummation of the heroin sale to the agents, "DeNoia, while carrying a firearm, delivered a bag containing heroin to Pavia. After inspecting the contents of the bag, the agents arrested Pavia and DeNoia." This obviously provided ample, independent evidence to support his convictions on the two substantive counts.

No such evidence was presented by the Government against Andriotis. The entire case against Andriotis consisted of the testimony of the co-conspirators Russo and McMillan. There is no doubt that once the conspiracy count was submitted to the jury, their deliberations were prejudiced on count eleven.

CONCLUSION

For the reasons stated, it is respectfully submitted that the verdict of guilty with respect to count twelve be set aside and a judgment of acquittal be entered thereon for the defendant-appellant Andriotis; further, that the verdict of guilty with respect to count eleven be set aside and a new trial ordered with respect to this charge.

Both the interests of justice and the need to prevent an

over-reaching and unintended extension of the laws of conspiracy,
require the reversal of Andriotis' conviction.

Respectfully submitted,

Harold B. Foner
Ira Leitel, of counsel

Attorneys for Defendant-
Appellant Andriotis

Please see the defendant-appellant Andriotis' Supplemental
Appendix immediately following herein.

4

Russo - direct

the guy so much money that -- because he got that money on consignment, so he said he got to pay the guy so much money so he took about \$25,000 out of there and disappeared. I don't know what he did with it, he took it and said, "I'm going to sell it and I got to pay the guy back some money." So he took about, I believe, \$25,000. It could have been more or less, I'm not sure.

Q You mentioned you know Mr. Andriotis.

A Yes.

Q How long have you known him, did you say?

A Since I am working in the real estate office, which is about two years, about two years.

Q Are you working there now?

A No, I'm not working there now.

Q Did you work there daily?

A Yes, five days a week, Monday to Friday.

Q Directing your attention to the end of August, 1972, did there come a time when you sold a quantity of counterfeit money on that date, or around that date?

A Around that date, I sold --

Q To whom did you sell it?

A I sold it to -- I spoke -- Shorty came down and he spoke to Nicky about --

Q Who is that?

5 Russo - direct

2 A Nick Andriotis about prices, about points,
3 14, 15, 16, 17 points, I believe they got together on 14
4 points.

5 Nick spoke to me a few days later, I think it
6 was, and he said to me, "Is it okay? I will take a package
7 \$10,000?"

8 I says, "All right."

9 He told me, he says, "But don't bring it here,"
10 he says, "Drive down 44th Street and someone will stop you,
11 his name is Paul. He'll stop you and he'll tell you you
12 got a package for me and just give it to him."

13 I drove down 44th Street, a guy stopped me,
14 he knew my car. He says, "You're Gary?"

15 I says, "Yes."

16 He says, "You got a package for Nicky?"

17 I says, "Yes."

18 I gave it to him. I left and went back to the
19 office --

20 Q What office?

21 A Menas Nastasti real estate office. I went back
22 there and Nicky paid me \$1,400 which in turn I believe I
23 called up Shorty again and told him what happened and -- I'm
24 not sure if I met him that day or a few days later and gave
25 him the money and we split the money up.

1 6 Russo - direct

2 Q You are talking about the \$1,400 which you
3 received from Mr. Andriotis?

4 A Yes. And then -- in September, Philly was --
5 kept bothering me about this \$100,000 deal and I told him
6 there is no more around. I said the only thing I had is
7 \$5,000.

8 He called me up. He says, "Meet me on Northern
9 Boulevard and" --a bar, I forget. There is a big bar on Northern
10 Boulevard and 72nd Street, Bianca I think it is -- "Meet
11 me in front of the place."

12 I went there, I met him and there was Joe
13 there again and I told him I didn't want to talk to him,
14 "Don't come near my car, stay away from my car. I don't
15 want nothing to do with you."

16 Philly kept --

17

18 (Continued on next page.)

19

20

21

22

23

24

25

NC fols.

NC fols.

1
2 is that right?

3 A Yes.

4 Q Didn't you tell us that in the case of
5 Andriotis, McMillan had to come and discuss with him the
6 points; is that right?

7 A Yes.

8 Q That was a different situation than all the
9 others; right?

10 A Yes.

11 Q You knew Andriotis?

12 A Yes.

13 Q You worked with him everyday?

14 A Yes.

15 Q But in his case you are telling us you didn't
16 arrange the deal but you brought in McMillan to arrange the
17 deal; is that right?

18 A McMillan used to stop in the place every once
19 in awhile.

20 Q He didn't stop there to buy real estate?

21 A No.

22 Q He didn't stop there because he knew
23 Andriotis?

24 A He was introduced to him.

25 (continued next page.)

Russo-cross/Sparrow

JS:SS
3pml
folls
MP

1
2 BY MR. SPARROW:

3 Q He stopped there because he knew you and he
4 was your partner, is that right?

5 A That's right.

6 Q He was your partner in handling funny money,
7 right?

8 A Right.

9 Q And when he dealt with you sometimes Nick
10 Andriotis happened to be in that place?

11 A Yes.

12 Q Is that right?

13 A Right.

14 Q When you were discussing these things with
15 McMillan, what happened the day before or the week before
16 or something like that, you didn't discuss it so that Nick
17 Andriotis was a party to it, did you?

18 A No, absolutely not.

19 Q But as I understand your testimony, there came
20 a time when you introduced Nick to John McMillan, right?

21 A Yes.

22 Q And did you stand by and talk with them or
23 just say hello and introduce them and that was all; what
24 happened?

25 A I stood there for a while and then I left. I

Russo-cross/Sparrow

1 2
3 don't recall if I stood there through the whole conversation
4 or not, or it might have been in the office and I was at
5 my desk or something like that.

6 Q How many times all told did you ever see Nick
7 Andriotis talk to John McMillan?

8 A Two, three times, maybe; that's about it,
9 maybe.

10 Q You didn't make any memorandum anywhere; you
11 don't write?

12 A No.

13 Q You're telling us this from your best re-
14 collection, is that right?

15 A Yes.

16 Q How many times, if at all, of that two or
17 three times did you participate in a conversation with them?

18 A Maybe twice. Maybe I was there each time for
19 a few minutes and left.

20 Q Did you ever give any single solitary counter-
21 feit note to Nick Andriotis?

22 A No.

23 Q Did you ever once see in the possession of
24 Nick Andriotis one solitary counterfeit note?

25 A No.

Q Did you ever see Nick Andriotis sell any

3

Passo-cross/Sparrow

counterfeit notes to anybody?

A No.

Q But as I understand your testimony, there came a time when allegedly you got from Nick Andriotis a certain sum of money, is that right?

A Yes.

Q How much was that?

A I believe it was \$1,400.

Q Tell us about that transaction again, when did it happen, do you know?

A The day?

Q Yes.

A I don't remember the day it happened.

Q Do you know the day of the week?

A No. It could have been a Tuesday, a Wednesday, a Thursday, it could have been a Friday.

Q IT all happened in one day?

A Yes, it happened in one day, yeah.

Q Well, did you tell us that there were two conversations between McMillan and Andriotis involving this, or one; how many?

A There might have been one or two. I told you he met him one or two times, I told you; I don't know how many times the conversation was brought up.

4

Russo-cross/Sparrow

Q Actually, you were the one that had been involved in counterfeiting that worked in that building, in that real estate office; is that right?

A Yes.

Q And you were the one that brought up the question of counterfeiting, is that right?

A Yes.

Q And somewhere along the line you say there came into being one transaction involving Nick Andriotis?

A Yes.

Q Is that right?

A Yes.

Q At any time, to your knowledge or recollection, was there ever a time that any of these counterfeit bills were in that premises while Nick Andriotis was there?

A I don't believe so. I don't believe so. I might have had one on me my own, but that's about it. I don't believe there was packs there.

Q I didn't hear you?

A I don't believe there was loads of money there in the real estate, there was none.

Q Incidentally, when you dealt in some of these real estate transactions, there were occasions when you did receive money for the sale for the real estate or deposits on

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A No.

Q How much was it?

A It was close to \$20,000.

Q That you collected on your compensation claim?

A Yes.

Q And you own a car?

A Excuse me?

Q Do you own a car?

A Yes.

Q What kind of car do you own?

A 1969 Cadillac.

Q Incidentally, when you got your license to drive, do you have a chauffeur's license?

A Yes.

Q And when you made out the application, or last renewed it, was there any question on it about whether you had ever suffered any heart attack or other disability since previously getting one?

A Yes.

Q What did you answer?

A No.

Q You said that you had not, is that right?

A I had not, right.

Q And that was a lie?

7

Russo-cross/Sparrow

1
2 A Yes.

3 Q Now, at the time that you say that this trans-
4 action occurred sometime in August, who carried a package
5 that day, you or Shorty?

6 A Me.

7 Q And where did you take that package?

8 A I drove down the street -- I believe it was
9 43rd Street or 44th Street, I don't recall which street it
10 was; someone was supposed to call my name, they knew my
11 car and they --

12 Q You gave that to somebody?

13 A Yes.

14 Q Do you know who that somebody was?

15 A No.

16 Q Have you ever seen him since?

17 A No.

18 Q Had you ever seen him before then?

19 A No.

20 Q Had you ever seen him in the company of
21 Nick Andriotis?

22 A No.

23 Q Do you know what car it was?

24 A It was no car. It was my car.

25 Q This person was just someone standing on the

8

street?

A Just walking down.

MR. SPARROW: May I have your Honor's indulgence for a moment.

THE COURT: All right.

BY MR. SPARROW:

Q In connection with the incident that you told us about when Shorty brought some money to your house on one occasion, and you say you were undressed --

A Yes.

Q -- your brother went to the door, is that right?

A Yes.

Q And he took the bag in?

A Yes.

Q Your brother knew what you were doing, didn't he?

A He knew it but he didn't like the idea.

Q He brought in this counterfeit money?

A Yes.

Q And did he ever help you in any other way in connection with it?

A No.

Q Did the agent or anybody from the government

office or I might have been at the other end of the office;
I might have been in the room.

Q In any event, you don't have any independent
recollection at this point of such a conversation between
Nick Andriotis and Shorty, is that right?

A No.

Q You told us that it was possibly two or three
weeks after the conversation with Shorty that there was a
delivery made by you to somebody down the block, is that
right?

A Yes.

Q Well, after Shorty supposedly had such a
conversation, did he then talk to you?

A Yes.

Q And was there any transaction the next day?

A No.

Q Or any time that week?

A I don't believe so.

Q Or the following week?

A Maybe, maybe the transaction was the follow-
ing week, a week or two later, I don't remember.

(Continued next page.)

BS:ss
3pm3

Russo-recross/Sparrow

BY MR. SPARROW:

Q At the time that all of this started at the real estate, I'm talking about now, the thing that you say happened with Nick Andriotis, you already had gotten this \$100,000 in counterfeit bills, hadn't you?

A Yes.

Q And you had at least a sizable portion of it still at home in your house, is that right?

A No. At that time there was maybe \$15,000 there.

Q You had \$15,000 of that in your house?

A Yes.

Q And then supposedly there is an agreement of some sort on points?

A Yes.

Q But you don't go on that day and bring in any part of that \$15,000 that you have at home?

A Right.

Q And you don't bring it in at any time that week?

A I don't recall, I don't think so.

Q And the best of your recollection is it could have been two or three weeks later that you finally brought it in; is that right?

29

Russo-recross/Sparrow

A Yes.

Q During that two or three week period did you see Shorty in the real estate office at all?

A Yes.

Q Were you having other transactions involving other people at that time?

A I think -- I don't know if it was before the transaction with Nick or after the transaction with Nick I sold to the agent.

Q So you are not sure of the date?

A No, I'm not sure of the date.

Q And you do know from the arrest records and everything else that the day that you sold to the agent was September 6th, 1973; wasn't it?

A Yes.

Q So now we are not sure whether the transaction ---

A It must have been before, because I got married ten days later and I went away. When I come back home I got locked up.

Q You got married ten days after you sold to the agent?

A Yes.

Q You were still working at the real estate

1
2 to the car, it was in a shopping bag, put it in my car
3 and I left.

4 Q After taking the shopping bag out of the
5 car, what did you do?

6 A Just put it in my car. Then I went back to
7 Dom's house. I called up Dom. He wasn't home or something,
8 I don't remember what it was, but his brother came out and
9 got the package.

10 Q Was that Mike?

11 A Yes, he took it inside.

12 Q What, if anything, did you do with this
13 counterfeit money?

14 A I did the same thing. The next day I came
15 back and we split it up into \$5,000 packages.

16 Q Did you sell any of this counterfeit money?

17 A You mean myself?

18 Q Yes.

19 A I don't think so.

20 MR. LA ROSSA: The answer?

21 THE WITNESS: No.

22 Q You testified last Thursday that you knew
23 that individual, Mr. Andriotis, over there, is that
24 correct?

25 A Yes.

1
2 Q How long have you known him?

3 A I just met him through Dom.

4 Q And when was that, do you recall?

5 A In 1972.

6 Q Would you relate to the Court and the Jury
7 the circumstances under which you met Mr. Andriotis?

8 A He wanted to buy money off of Dom and he
9 didn't want to pay the price, so Dom told me to come and
10 see him and talk to him, and make like he was working
11 just the million dollar at one point -- one point of the
12 money, and I was supposed to try to get as much as I could
13 off him.

14 Q And did you have a conversation with
15 Mr. Andriotis at that time?

16 A Yes.

17 Q What was the substance of the conversations
18 with him?

19 A Well, we were discussing that he didn't
20 want to pay 15 points for it, and we were talking and
21 we agreed on, I think 12 points.

22 Q Approximately how much money did you make
23 dealing in this counterfeit?

24 A I don't know.

25 Q Do you have any idea?

McMillan-cross/Sparrow

MR. SPARROW: Very well, I withdraw that.

BY MR. SPARROW:

Q Now you didn't at any time confer with, let us say, Agent Columbo (sic) --

(There was laughter.)

THE WITNESS: Coppola.

MR. SPARROW: Coppola.

Q Coppola, you didn't confer with Agent Capola at any time relative to the points that he would have to pay for counterfeit money, did you?

A No.

You mean the sale?

Q Yes.

A No, I only met Capola at one time in the restaurant, at that time, then after I was arrested I met him one or two times.

Q Did you confer with Philip Martino and make arrangement of points with him?

A Yes.

Q Did you or Russo do that?

A Dominick the first time told me to say that I would be the guy, say it was mine and he was just working on points. We both did it together.

Q Let us get back to the real estate office.

11

McMillan-cross/Sparrow

1
2 You have been there talking with Russo on a
3 number of occasions?

4 A Right.

5 Q And once you say you spoke to Andriotis; is
6 that right?

7 A I spoke to him but just saying hello, this and
8 the other.

9 Q Just in passing as you were in there?

10 A Yes, right.

11 Q And at the time that you say Russo began
12 trying to or did sell money to Andriotis, Russo had already
13 received from you a large quantity of these counterfeit bills.
14 hadn't he?

15 A Right.

16 Q He had many in his possession; is that right?

17 A Yes.

18
19 (continued next page)
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2 Q Now, when you spoke to Andriotis, where did that
3 conversation take place?

4 A In Dom's cubicle in the real estate place.

5 Q Was this cubicle separated from other cubicles?

6 A Yes, it is separated but the fronts were all
7 open.

8 Q Who else was present when you had this alleged
9 conversation?

10 A I don't know.

11 Q Anybody to your recollection?

12 A No, there was some other people there, there were
13 five or six other people there.

14 Q Did you ever give counterfeit money to Nick
15 Andriotis?

16 A No.

17 Q Did you ever see him in the possession of any?

18 A No.

19 Q Did you ever show him any?

20 A No.

21 Q Did you ever see anybody ever deliver any
22 counterfeit money to Nick Andriotis?

23 A I didn't.

24 Q Well, in any event, there came a time when Russo
25 told you that he had sold to Andriotis; is that right?

McMillan-cross/Sparrow

1
2 A Yes, sir.

3 Q That is the only information that you have as
4 to whether or not there was a sale?

5 A Right.

6 Q And when Russo told you that, how many times
7 did he say he had sold to Andriotis?

8 A I believe just once.

9 Q I direct your attention, I direct your
10 attention to defendant's Exhibit T in evidence and I
11 specifically ask you to look at page 5, and I direct your
12 attention to this paragraph (indicating).

13 Did you sign this statement?

14 A Yes, and my initials are right there.

15 Q And your initials are on this page as well; is
16 that right?

17 A Yes.

18 Q And does it read and is this what you told the
19 agents about Dom Russo --

20 MR. DE PETRIS: Objection to the form, your
21 Honor.

22 THE COURT: Ask him whether he told the agent
23 so-and-so?

24 BY MR. SPARROW:

25 Q Did you tell the agents that "Dom Russo sold

1 2 Kramer - direct

2 A Yes, sir, this is the Exhibit number 43 which
3 refers to my purchase of \$10,000, approximately, \$10,000 of
4 counterfeit 10's on September 6th, of '72.

5 Here are my initials and the date, 9/6/72, are
6 on this.

7 And for Exhibit 44, it makes reference to approx-
8 imately \$10,000 that I purchased on August 24th of '72, and my
9 initials and the date is on each of these envelopes.

10 These are counterfeit currency 10's, which are
11 broken down by serial numbers.

12 (The witness then returned the bills to the
13 various envelopes.)

14 Q One was August 24th, and the other was September
15 6th; is that correct?

16 A Right, 1972.

17 Q Now, on September 6th, was Mr. Martino arrested?

18 A Yes.

19 Q And did he agree to cooperate on that date?

20 A Yes, sir.

21 MR. LA ROSSA: Objection.

22 THE COURT: Overruled.

23 MR. DE PETRIS: Your Honor, at this time I would
24 offer Government's Exhibit 40, 41, 42, 43, 44, and I
25 believe -- and 11 and 12 have already been offered, those

are the plates and negatives; 13, which are the maps; 15 through 18, which is the counterfeit which was recovered on February 15th; and 37 and 14.

MR. LA ROSSA: Objection.

THE COURT: I think some of these may not be admissible as against Andriotis or Mr. Kurschenoff.

I will have to rule on that later on, that is, as to the extent to which they may be evidence of their being Conspirators, I will receive them as against Mr. LaVecchia and Mr. Bogin, but I will reserve them -- I am not determining your question as to whether it has been established that Mr. Bogin and Mr. LaVecchia are Conspirators.

MR. DE PETRIS: Also Government's Exhibit 45, your Honor.

MR. LA ROSSA: Are you going to give me an opportunity to argue? I think the same thing applies to Mr. LaVecchia.

MR. FISCHETTI: And I think Mr. Bogin.

MR. LA ROSSA: I would like to tell you outside the presence of the jury why.

MR. FISCHETTI: I have specific objections to several of the items.

THE COURT: They will be received in evidence,

US COURT OF APPEALS: SECOND CIRCUIT

USA,

Plaintiff-Appellee,

against

LA VECCHIA, et al,

Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, James Steele, being duly sworn,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th Street, New York, New York
That on the 12th day of December 19 74 at 225 Cadman Plaza, New York, Bklyn
deponent served the annexed Brief & Supplemental Appendix upon

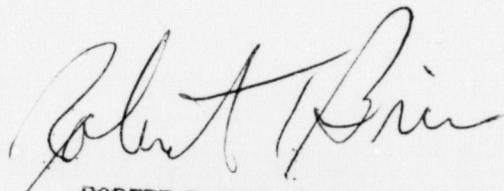
David G. Trager

the 2 in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 12th
day of December 19 74

Print name beneath signature

JAMES STEELE


ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418050
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

